THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1736 of 2007

Dated: 01.02.2007

Between:

Mustur Manohar Narayanamma.

..... PETITIONER

AND

The District Collector, Nellore, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.1736 of 2007

ORDER:

The petitioner is allegedly owner of a residential premises bearing D.No.12-55 situated at Railway Station Road,

Mutyalapeta, Gudur, Nellore District. Third respondent initiated action under the provisions of the Andhra Pradesh Land Encroachment Act, 1905 (the Act, for brevity). A notice under Section 7 thereof was issued on 11.11.2006. The petitioner also submitted explanation, *inter alia,* objecting the notice as being vague. As there is no response, instant writ petition is filed.

The only ground urged in support of the writ prayer is that the impugned notice issued under Section 7 of the Act is vague and is not in accordance with Appendix-XXXII under Board Standing Order 26. Reliance is also placed on an unreported judgment of this Court in W.P.No.24569 of 2006 and batch dated 27.11.2006.

The learned Assistant Government Pleader for Revenue (General-A) does not dispute the legal position nor dispute the above contention. Indeed it is brought to the notice of this Court that in the judgment referred to hereinabove, similar notices were subject matter of the writ petitions. Dealing with the question of notice under Section 7 of the Act, this Court observed as follows.

> Section 6 of the Act contains the procedure for evicting the unauthorized occupant of the Government land. Such procedure must commence with serving of notice under Section 7 of the Act. Section 7 of the Act obligates the Mandal Revenue Officer to issue a notice specifying the land occupied by the alleged encroacher. The Act or the Andhra Pradesh Land Encroachment Rules, 1976, do not indicate any specific Form in which a notice under Section 7 of the Act should be served. However, Board Standing Order (BSO) 26, which deals with unauthorized occupation of the Government land by para 3 requires the Mandal Revenue Officer to serve a notice under Section 7 of the Act as per Appendix-XXXII. The Form of notice under Section 7 of the Act in Appendix-XXXII of BSO 26 reads as under.
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> To
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> residing in village, taluk.
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> Whereas you are reported to be unauthorized occupation of the land specified in the schedule below, which is the property of Government, you are hereby given notice that if you so desire you may, before 19 , show cause either in person or in writing before ***me/the Collector*** why you should not in addition to the full assessment on the land under Section (3) (i) of the Act to the rate prescribed by or under Section (3) (ii) of the Act be charged a penalty for such occupation under Section 5 of Act III of 1905 **and/or** be subjected to eviction from the land and forfeiture of the crops, products, building, constructions and things deposited thereon under Section 6 of the said Act.
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> SCHEDULE

Village	Survey number and Sub-division	Description of land	Entire extent. Acs.Cts.	Occupied Extent. Acs.Cts.	Nature of Occupation

The BSOs do not always have statutory colour. They are still binding. The Mandal Revenue Officer, however, issued the impugned notices ignoring para 3 of BSO 26. Therefore, the impugned notices are unsustainable. As the impugned notices suffers from lack of basic requirement as per law, this Court is not able to countenance the submission of the learned Assistant Government Pleader that in response to the representation made by the petitioners, the Mandal Revenue Officer will issue additional notices which would cure the defect. In the case on hand, whether defect pointed out is a curable defect or not is not of much relevance, especially, when the notices issued under Section 7 of the Act does not specify the area allegedly encroached upon or occupied by each of the petitioners, as required under relevant BSO. On this reason alone, the impugned notices are unsustainable. This does not, however, preclude the Mandal Revenue Officer to issue fresh notices to the petitioners, obtain their explanations and pass appropriate orders under Section 6 of the Act. It is alleged that the petitioners have occupied the Government land on both sides of Gudur-Rajampet Road. Therefore, it shall be open to the Mandal Revenue Officer to take up the exercise as indicated hereinabove, and complete the same within a period of eight weeks from the date of receipt of a copy of this order.

Following the above, the impugned notice dated 11.11.2006 is set aside. Liberty is given to third respondent to issue proper notice before taking further action. The writ petition is accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

01st February, 2007
Note: Issue CC by 03.02.2007.
B/o
ghn